



BORDER SECURITY (INFORMATION SHARING) BILL 2021

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BORDER SECURITY (INFORMATION SHARING) BILL 2021

A **BILL** to make provision about the sharing of information in connection with the exercise of existing public sector functions pertaining to the movement of persons and goods to and from the Island; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1 Short title

The short title of this Act is the Border Security (Information Sharing) Bill 2021.

2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Council of Ministers may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Council of Ministers considers necessary or expedient.

3 Interpretation

In this Act —

“**applied GDPR**” means the GDPR as applied to the Island by the Data Protection (Application of GDPR) Order 2018¹, including all the exceptions adaptations and modifications specified in that order;

“**code of practice**” is to be construed in accordance with section 9(1);

“**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018²;

“**GDPR**” or “**General Data Protection Regulation**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of

¹ SD 2018/0143

² SD 2018/0145

personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“**personal data**” has the meaning given by article 4(1) of the applied GDPR;

“**principal objective**” is to be construed in accordance with section 4(1);

“**participant**” is to be construed in accordance with section 5(1);

“**processing**” has the meaning given by article 4(2) of the applied GDPR;

“**public authority**” includes a Department, a Minister, a Statutory Board and a public officer;

“**specified objective**” has the meaning given by section 4(3).

4 Objectives

- (1) The principal objective of this Act is for participants to coordinate the exercise of their respective functions so as to prevent the unlawful movement of persons and goods to and from the Island.
- (2) To avoid doubt, the unlawful movement of persons to the Island includes the unlawful employment of such persons in the Island.
- (3) The Council of Ministers may by regulations specify further objectives (each a “specified objective”) in relation to a participant.
Tynwald procedure – affirmative.
- (4) An objective may be specified under subsection (3) only if –
 - (a) it has as its purpose the supporting of –
 - (i) the delivery of a participant’s functions; or
 - (ii) the administration, monitoring or enforcement of a participant’s functions; and
 - (b) its purpose is consistent with the principal objective.
- (5) Before making regulations under subsection (3), the Council of Ministers must consult –
 - (a) each participant; and
 - (b) such other persons as the Council of Ministers considers appropriate.

5 Participants

- (1) Each of the following is a participant –
 - (a) the Cabinet Office;
 - (b) the Minister for the Cabinet Office;
 - (c) the Department for Home Affairs;
 - (d) the Chief Constable;
 - (e) the Treasury;

- (f) the Collector;
 - (g) the Financial Intelligence Unit;
 - (h) the Lieutenant Governor;
 - (i) the Department of Environment, Food and Agriculture;
 - (j) the Isle of Man Office of Fair Trading;
 - (k) the Department of Infrastructure;
 - (l) the Department for Enterprise.
- (2) The Council of Ministers may by regulations amend subsection (1) so as to add, remove or modify an entry relating to a participant.
- Tynwald procedure – affirmative.
- (3) Regulations under subsection (2) may add an entry relating to a participant only if –
- (a) the person exercises functions which, if the person were a participant, may contribute to the delivery of the principal objective or any specified objective; and
 - (b) the person –
 - (i) is a public authority; or
 - (ii) provides services to a public authority.
- (4) In the case of a person (“P”) who is a participant merely because of providing services to a public authority –
- (a) the reference in subsection (3)(a) to the functions of the person is limited to the functions P exercises to provide those services; and
 - (b) P is a participant only in relation to the exercise of those functions.
- (5) In determining whether to make regulations under subsection (2) in relation to a person, the Council of Ministers must have regard, in particular, to –
- (a) the systems and procedures for the secure handling of information by that person ; and
 - (b) in the case of regulations which remove a person from subsection (1) whether that person, or any person providing services to that person, has had regard to the code of practice under section 9 as required by that section.

6 Disclosure of information

A participant may disclose information held in connection with any of the participant’s functions to another participant for the purposes of the principal objective or any specified objective in relation to that other participant.

7 Further provisions about disclosures under section 6

- (1) Personal data disclosed under section 6 may only be used by the person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).
- (2) Subsection (1) does not prevent the use of information by a person —
 - (a) if the information has already lawfully been made available to the public;
 - (b) if the person to whom the information relates consents to its use for another purpose;
 - (c) for the prevention or detection of crime;
 - (d) for the purposes of a criminal investigation;
 - (e) for the purposes of legal proceedings (whether civil or criminal); or
 - (f) for the purposes of —
 - (i) preventing serious physical harm to a person;
 - (ii) preventing loss of human life;
 - (iii) safeguarding vulnerable adults or children;
 - (iv) responding to an emergency; or
 - (v) protecting national security.
- (3) A disclosure under section 6 does not breach —
 - (a) any obligation of confidence owed by the person making the disclosure; or
 - (b) any other restriction on the disclosure of information (however imposed).
- (4) But nothing in section 6 authorises the making of a disclosure which contravenes data protection legislation.
- (5) Section 6 does not limit the circumstances in which information may be disclosed apart from that section.

8 Confidentiality of personal data

- (1) Subject to subsection (2), personal data disclosed under section 6 and received by a person (“P”) may not be further disclosed —
 - (a) by P; or
 - (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure —
 - (a) which is required or permitted by any Manx enactment (including section 6) or any Parliamentary enactment which has effect in the Island;

- (b) which is required by a retained EU obligation;
- (c) which is made in pursuance of an order of the court,
- (d) of information which has already lawfully been made available to the public;
- (e) which is made for the prevention or detection of crime;
- (f) which is made for the purposes of a criminal investigation;
- (g) which is made for the purposes of legal proceedings (whether civil or criminal);
- (h) which is a protected disclosure for any of the purposes of Part IV of the Employment Act 2006;
- (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest;
- (j) which is made with the consent of the person to whom it relates; or
- (k) which is made for the purposes of —
 - (i) preventing serious physical harm to a person;
 - (ii) preventing loss of human life;
 - (iii) safeguarding vulnerable adults or children;
 - (iv) responding to an emergency; or
 - (v) protecting national security.

9 Code of practice

- (1) The participants, acting jointly, must issue a code of practice about —
 - (a) the disclosure of information under section 6;
 - (b) the use of information disclosed under that section; and
 - (c) how the processing of such information complies with data protection legislation.Tynwald procedure — affirmative.
- (2) The code of practice must be consistent with any code of practice prepared under regulation 84 of the GDPR and LED Implementing Regulations 2018 and issued under regulation 86(3) of those Regulations (as altered or replaced from time to time).
- (3) A person to whom the code applies must have regard to the code of practice —
 - (a) in disclosing information under section 6; and
 - (b) in using information disclosed under section 6.
- (4) The participants may from time to time revise and re-issue the code of practice.

Tynwald procedure — affirmative.

- (5) In disclosing information under section 6, a person must have regard to the following codes of practice issued by the Information Commissioner under regulation 89 of the GDPR and LED Implementing Regulations 2018, so far as they apply to the information in question —
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
 - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of data protection legislation) about the use to be made of information collected from them.

Consultation draft